

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Treadwell Corporation :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Years 1976 - 1978. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 17th day of June, 1983, he served the within notice of Decision by certified mail upon Treadwell Corporation, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Treadwell Corporation
1700 Broadway
New York, NY 10019

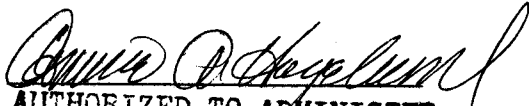
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
17th day of June, 1983.

David Parchuck

Kathy Pfaffenbach


AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Treadwell Corporation :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Years 1976 - 1978. :

State of New York
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 17th day of June, 1983, he served the within notice of Decision by certified mail upon Walter J. Lambert the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Walter J. Lambert
Ernst & Whinney
153 E. 53rd St.
New York, NY 10022

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
17th day of June, 1983.

David Parchuck

Kathy Pfaffenbach

William P. Hylton

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

June 17, 1983

Treadwell Corporation
1700 Broadway
New York, NY 10019

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Walter J. Lambert
Ernst & Whinney
153 E. 53rd St.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
TREADWELL CORPORATION	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9-A of the Tax Law for the Years 1976,	:	
1977 and 1978.	:	

Petitioner, Treadwell Corporation, 1700 Broadway, New York, New York 10019, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the years 1976, 1977 and 1978 (File Nos. 28421 and 35233).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 23, 1982 at 1:15 P.M., with all briefs to be submitted by September 20, 1982. Petitioner appeared by Ernst & Whinney, C.P.A.'s (Walter J. Lambert, C.P.A.). The Audit Division appeared by Paul B. Coburn, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly excluded a subsidiary from a combined corporation tax report on the basis that petitioner, the parent corporation, failed to obtain prior permission for the inclusion of the subsidiary in its combined tax reports.

II. Whether the subsidiary qualified for inclusion in the combined group.

FINDINGS OF FACT

1. Petitioner, Treadwell Corporation, filed forms CT-3, New York State Corporation Franchise Tax Reports, for the 1976, 1977 and 1978 taxable years

on a combined basis with its subsidiaries, T.R.C. Construction Corp., Pescado Developments, Inc., Treadwell Corporation of Michigan, Inc. and 1827 Flushing Realty Corp.

2. On December 21, 1979, the Audit Division issued a Statement of Audit Adjustment against petitioner showing an alleged corporation tax deficiency of \$3,711.00 plus interest for the 1976 taxable year. Petitioner's corporation tax liability was recomputed as follows:

Combined business income per report	349,930
Less entire net income unauthorized corporations	(34,109)
Plus erroneous adjustment for foreign taxes	7,728
Adjusted combined business income	391,767
Allocated at the adjusted rate of 71.892%	281,649
Tax at 10%	28,165
Subsidiary capital tax	-0-
Total tax due	28,165
Tax paid	24,454
Deficiency in tax	3,711

In addition, the following explanation was provided:

"The above computation reflects the elimination of 1827 Flushing Avenue Realty Corporation from the combined group as altering the makeup of an existing combined group is discretionary with the Tax Commission and requires prior approval requested within thirty days of the close of the taxable year. In addition, the property factor of the business allocation percentage was further adjusted to eliminate intercompany capitalized rents from the denominator as opposed to the numerator. Furthermore, for periods commencing on or after January 1, 1976, the deduction for foreign taxes is no longer allowable for New York State purposes. Lastly, subsidiary capital tax is not assessed on those corporations included in the combined group."

Petitioner has only challenged in this proceeding the elimination by the Audit Division of 1827 Flushing Avenue Realty Corp. from the combined report.

3. On December 21, 1979, the Audit Division also issued a Statement of Audit Adjustment against petitioner showing an alleged corporation tax deficiency of \$1,820 plus interest for the 1977 taxable year. Such deficiency was based upon the elimination of 1827 Flushing Avenue Realty Corp. from petitioner's combined computation of corporation tax.

4. On January 30, 1980, the Audit Division issued two Notices of Deficiency against petitioner imposing corporation tax deficiencies of \$3,711 plus interest and \$1,820 plus interest for the 1976 and 1977 taxable years, respectively.

5. The Audit Division subsequently asserted a greater deficiency for 1977, increasing the total deficiency in that year by \$490.00, due to a correction of the property factor used in calculating petitioner's business allocation percentage.¹

Petitioner did not challenge the recalculation of its business allocation percentage by the Audit Division.

6. On September 18, 1981, the Audit Division issued a Notice of Deficiency against "Treadwell Corporation & Subsidiaries" showing an alleged corporation tax deficiency of \$10,149 plus interest for the 1978 taxable year. Attached to the Notice of Deficiency was a Statement of Audit Adjustment explaining that the deficiency was "based on recent Field Audit." The deficiency for 1978 also resulted from the Audit Division's determination that petitioner may not file on a combined basis with its subsidiary, 1827 Flushing Realty Corp.

7. 1827 Flushing Avenue Realty Corp. is a New York corporation incorporated on May 15, 1976 to own real estate which, according to the petitions herein, "was used exclusively by Treadwell for storage purposes."

8. On August 8, 1972, petitioner was granted permission by the Audit Division to file a combined New York State Corporation Franchise Tax Report including itself, Pescado Development Inc., T.R.C. Corporation and Thomaston Equipment Corp. During 1974, petitioner organized a new subsidiary, Treadwell Corporation of Michigan, Inc. and this subsidiary was included by petitioner

¹ In calculating the original deficiency, the auditor had neglected to eliminate intercompany rents from the denominator of the property factor.

in its combined reports for 1975, 1976, 1977 and 1978. In 1976, petitioner organized a new subsidiary, 1827 Flushing Avenue Realty Corp. and included this subsidiary in its combined reports for 1976, 1977 and 1978.

Petitioner requested permission to include 1827 Flushing Avenue Realty Corporation and Treadwell Corporation of Michigan, Inc. in its combined corporation tax reports on January 16, 1980. On April 8, 1980, the Audit Division granted permission to petitioner to include 1827 Flushing Avenue Realty Corporation in its combined group beginning with the period ended December 31, 1979. The Audit Division noted further that "(o)ur records indicate that Treadwell Corporation of Michigan is already a part of the existing combined report."

CONCLUSIONS OF LAW

A. That 20 NYCRR §6-2.4, "Permission for Filing Combined Reports", which was effective for the taxable years beginning on or after January 1, 1976 provides, in part, as follows:

"(b) A written request for permission to include or exclude a corporation from an existing combined report must be received by the Tax Commission not later than thirty (30) days after the close of the taxable year of the corporations filing the combined report. The information required by paragraphs (2), (4) and (5) of Subdivision (a) of this section must be submitted with the request."

Since petitioner failed to file a timely request for permission to include 1827 Flushing Realty Corporation in its existing combined report, the Audit Division properly excluded this subsidiary from the corporation tax reports filed by petitioner for the taxable years at issue. We note further that the cases cited by petitioner in support of its position involved taxable years prior to the effective date of this regulation.

B. That the second issue herein is therefore rendered moot.


C. That the petition of Treadwell Corporation is denied and the Notices of Deficiency (including the increased amount claimed for 1977 as set forth in Finding of Fact "5", supra) are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 17 1983


PRESIDENT


COMMISSIONER


COMMISSIONER